

02.04.2026

Sl. No.: 20

Court No.6

BM

C.O. 1118 of 2026

SMT. RITA CHATTERJEE

VS

DIGNAGAR UNIQUE CLUB AND ORS.

Mr. Soumyadeep Biswas

... for the petitioner

1. This revisional application is directed against an order dated December 4, 2025 passed by the learned Civil Judge, Junior Division, First Court, Krishnagar, Nadia whereby the petitioner's application for local investigation under Order 26 Rule 9 of the Code of Civil Procedure has been rejected.

2. The petitioner has filed a suit being Title Suit No.437 of 2023 praying for a Decree for Permanent Injunction against the opposite parties.

3. In the said suit, the petitioner filed an application for local investigation under Order 26 Rule 9 of the Code averring as follows :-

i) *That this plaintiff have filed this suit for permanent injunction against the principle defendants. After getting the summons these defendants appeared in the suit and filed written statement.*

ii) *That latter on these defendants filed an application for local inspection of the suit property. After contested hearing learned court was pleased to allow the same and as per Court's order Advocate commissioner went to the locale for inspection. During the inspection preceding the*

defendant club claimed that they have constructed the club building over the suit property as well as a temple also lies over the suit property.

- iii) That under this circumstances and for proper adjudication, a local investigation is very much necessary in order to ascertain the boundary area of the suit plot and also whether the defendant club has already encroached the property of the plaintiff and the pro-defendants.*
- iv) The suit property is situated about 18 to 20 KM away from this Ld. Court.*

4. Based on the aforesaid pleadings, a prayer was made for appointment of survey passed Commissioner for investigating the following points:-

- a) Ld. Advocate commissioner (survey passed) shall demark the specific boundary of the suit plot.*
- b) Ld. Advocate commissioner(survey passed) shall ascertain the specific area (if any) dispossessed or encroached area by the defendant club of the plaintiff over the suit plot.*
- c) Ld. Advocate commissioner (survey passed) shall prepare map during local investigation and shall describe the constructed building, by the defendant club, over the encroached portion of the suit plot (if any).*

5. The aforesaid application has been rejected by the order impugned. Hence, the revisional application.

6. Learned Advocate appearing for the petitioner submits that an application for local inspection filed by

the opposite parties under Order 39 Rule 7 of the Code was allowed by the learned trial court and there was no reason for the learned trial court to disallow the petitioner's application under Order 26 Rule 9.

7. It is further submitted that it is not the petitioner's case that the opposite party has encroached upon the petitioner's land but it is rather the opposite parties' case that they have encroached upon the petitioner's land wherefor such an application had been necessitated.

8. Having heard the learned advocate appearing for the petitioner and having considered the materials on record, this court is unable to find any error far less jurisdictional error in the order impugned. Neither the plaint nor the application under Order 26 Rule 9 contains any pleading justifying appointment of a survey passed Commissioner for conducting local inspection in terms of Order 26 Rule 9 of the Code. The provisions of Order 26 Rule 9 of the Code are intended to elucidate any matter in the suit and the same are for the purpose of assisting the Court for coming to a just conclusion.

9. In the case at a hand the Court has reasoned out that the dispute in the suit is with regard to possession of the suit property and there is no averment as regards encroachment in the plaint. The Court has further reasoned that the factum of possession is to be proved by the plaintiff on the basis of primary and secondary

evidence and such fact cannot be proved on the basis of inspection or investigation. The reasoning given by the learned Trial Court is plausible. The same therefore does not call for any interference.

10. C.O. 1118 of 2026 is dismissed without any order as to costs.

11. This will however, not preventing the petitioner for making appropriate application in case occasion so arises in future.

(Om Narayan Rai, J.)